

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

Case No. 15-20217

Hon. Stephen J. Murphy, III

7 D-2 BRYAN WATSON

8 Defendant.

9 **SENTENCING**

10 BEFORE THE HONORABLE STEPHEN J. MURPHY, III
11 United States District Judge
12 Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Wednesday, February 22, 2017

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1 Detroit, Michigan

2 Wednesday, February 22, 2017

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4 (Proceedings commenced at 12:50 p.m., all parties
5 present)

6 THE COURT: Let's call Mr. Watson's case now if you
7 would, Mr. Parker.

8 THE CASE MANAGER: Yes. The Court calls Case
9 No. 15-20217, United States of America versus Bryan Watson.
10 Counsel, please state your appearances for the
11 record.

12 MR. BUCKLEY: Good afternoon, Your Honor. May it
13 please the Court, Michael Buckley appearing on behalf of the
14 United States.

15 MR. FISHMAN: And Steve Fishman on behalf of Mr.
16 Watson who's in court.

17 THE COURT: Okay. Welcome to both of you, and I do
18 see that Mr. Watson is here. Thanks, lawyers, for being on
19 time, and thanks to Mr. Fishman for your patience as we resolve
20 the other matter.

21 As everybody knows, we are on defendant number two,
22 and Mr. Watson had a jury conviction on Count 1 of the First
23 Superseding Indictment and -- and he is now to be sentenced
24 today.

25 The probation officer, Mr. Hampstead, has lodged an

1 extensive report and there are objections. I don't want to be
2 flip or -- or in -- not spend appropriate time, but Objection
3 Number 1 and Number 2 from the United States were lodged almost
4 in verbatim fashion in the first case and we had an extensive
5 colloquy, and I would -- I would incorporate the discussion we
6 had on -- on the government's objections to the Pre-Sentence
7 Report from Mr. Hansberry's sentencing in this one. And as I
8 mentioned, as a matter of law, I am declining to assess
9 acquitted conduct in the -- in the sentencing calculations
10 against Mr. Watson, but I should let Mr. Buckley say anything
11 else he'd like to say in support of his objection.

12 MR. BUCKLEY: Thank you, Your Honor.

13 The Court's approach is satisfactory to the
14 government. We make the same objection for the same reasons
15 stated at Mr. Hansberry's sentencing and as set forth in our
16 Sentencing Memorandum. I understand the Court's ruling.

17 THE COURT: Okay. All right. Now, Mr. Fishman
18 addressed those matters in his sentence memo, which I've read,
19 and I suspect he's got not much to say because the decision
20 went in his favor. But nevertheless, anything on government
21 objection?

22 MR. HARRISON: I have nothing to say about the
23 government objections. And I do have something to shorten the
24 proceedings on my objections I think, consistent with what you
25 ruled in the -- in the other sentencing.

1 THE COURT: Terrific. Terrific. Okay. Government
2 Objection Number 1 and number 2 are overruled.

3 I have something that might shorten things as well,
4 which is that Objections Number 1 through Number 6 come from
5 Mr. Fishman on behalf of his client, Mr. Watson, and they are
6 calculated to educate the Court and the probation officer about
7 his differing version of the offense conduct and the arguments
8 he wanted to make factually in support of his sentence request
9 which were listed in his Sentence Memorandum.

10 Again, I would neither grant nor deny the objections,
11 but I would -- I would say for the record that these objections
12 don't affect the guideline range but indeed do state a
13 different version of the offense than that that Mr. Hampstead
14 prepared based on the government papers that were supplied to
15 him, and therefore I would incorporate those objections as
16 they're stated by Mr. Hampstead into the -- into the report,
17 and -- and then the -- as I mentioned, the Bureau of Prisons
18 and the Sentencing Commission will have a full understanding of
19 what the offense conduct was according to the government and
20 the objections to it according to Mr. Watson. Acceptable?

21 MR. FISHMAN: Great minds think alike. That was
22 exactly what I was going to say, but I wouldn't have said it
23 quite so eloquently. I would have had the usual stumbling and
24 mumbling

25 THE COURT: I'm sure you would have said it even

1 better, so...

2 MR. FISHMAN: Yeah, I agree.

3 THE COURT: That's acceptable to you, Mr. Buckley?

4 MR. BUCKLEY: Judge, I don't pretend to be a great
5 mind, but I agree. Thank you, Your Honor.

6 THE COURT: Yeah. Well, you guys -- you guys work
7 hard, so... .

8 Okay. Let's go to Objection Number 7 then, and this
9 is the -- this is the financial issue. And paragraph 9, page
10 28, Mr. Hampstead assessed a \$916,000 adjustment as well as the
11 two kilograms of narcotics and upped the -- upped the offense
12 conduct, adjusted it upward I believe 14 levels on that basis.

13 Mr. Fishman, what would you like to say?

14 MR. FISHMAN: I want to start by saying two things.
15 I heard the Court and I heard you again say that you're not
16 considering acquitted conduct.

17 THE COURT: Mm-hmm.

18 MR. FISHMAN: And I just wanted to point out, because
19 I listened very carefully to the Hansberry sentence, acquitted
20 conduct included not just the substantive counts, the
21 substantive Hobbs Act counts, but they also included the
22 conspiracy to distribute narcotics counts. And I heard a lot
23 of arguments from the government on various issues that kept
24 referring to narcotics that were supposedly stolen, narcotics
25 that were distributed. I think the Court's ruling, the Court's

1 statement that you're not considering acquitted conduct should
2 apply as well to any conversations about -- whether it was
3 Lamont Calhoun talking or Gary Jackson or anybody else because
4 clearly, as I point out a number of times in my Sentencing
5 Memo, had the jury accepted any of that testimony, it would
6 have been impossible for Bryan Watson to have been acquitted of
7 conspiracy to distribute narcotics.

8 Obviously no one's talking about and we don't need to
9 talk about the substantive narcotics count that was accompanied
10 by the 924(c) count.

11 But I do believe that the Court should restrict
12 itself now to what, in fact, the offense of conviction was.
13 I've followed exactly what you said about the conspiracy to
14 violate the Hobbs Act and that there had to be an overt act,
15 and I agree with the Court on that. But I don't think that the
16 government, consistent with your -- your ruling, I don't think
17 they can argue anything about drugs because Mr. Watson was
18 acquitted of anything having to do with drugs, both
19 substantively and in terms of the conspiracy.

20 So that -- that -- I just wanted to say that to begin
21 with.

22 THE COURT: Okay.

23 MR. FISHMAN: And then --

24 THE COURT: Let -- let me interrupt briefly --

25 MR. HARRISON: Sure.

1 THE COURT: -- because I -- I meant to -- I circled
2 something and I meant -- I meant to do this and I -- I didn't.
3 But -- but the Objection Number 7 dovetails with Objection
4 Number 9, and Objection Number 9 is page 9, paragraph 35, and
5 as I said, that's the -- that's the 14-level enhancement. And
6 I -- I hear what you're saying in terms of acquittal on
7 conspiracy to distribute narcotics as it affects the jury's
8 decision on Count 1. But just so we're clear, I'm -- I'm
9 interested in that argument as well as any other you'd like to
10 make and then Mr. Buckley's response as to -- as to how he
11 believes he's not worthy of the 14-level enhancement for the
12 \$960,000.

13 MR. FISHMAN: I'm -- I'm prepared to do it, and
14 you're going to hear something that's different than what you
15 heard earlier.

16 THE COURT: Fine.

17 MR. FISHMAN: Okay?

18 THE COURT: Yep.

19 MR. FISHMAN: My understanding of the law is the
20 Court is going to have to be convinced by a preponderance of
21 the evidence that that theft occurred before you'll allow it to
22 be included in the guideline calculation.

23 THE COURT: Yeah.

24 MR. FISHMAN: In making that determination, this
25 Court, unlike the normal situation where it's a guilty plea,

1 you can rely on the things you observed and the things that you
2 heard during the trial.

3 So the first thing I would point out is that Mr.
4 Jackson is the only witness that claimed that, he's the only
5 person that said that. Mr. Leavells was asked all these
6 different things: "What did you see?" "Well, these guys
7 wouldn't hug me so maybe I thought something." I asked him
8 very simply, "Well, Mr. Leavells, where do you think they put
9 the money, in their drawers?" And of course he didn't say
10 that.

11 So it's really just the word of Gary Jackson. And
12 the reason I suggest that is because the Court has every right,
13 having heard the case, to base its decision on whether or not
14 it's proven by a preponderance of the evidence through the
15 testimony of Gary Jackson. You can begin with the demeanor of
16 Gary Jackson, and you sat here, as we all did, and watched how
17 he acted and watched how he behaved and watched him close to
18 creating a mistrial, at least I had to make a motion; watched
19 him engage with me for absolutely no reason, and the Court had
20 to chastise, "Mr. Jackson, just answer the questions, quit
21 volunteering things, quit doing things you're not supposed to
22 do essentially." You have every right to consider that because
23 demeanor, as the Court knows, you instruct juries on that, that
24 the demeanor of the witness on the stand means something. And
25 Mr. Jackson, with the way he chose to behave, which was totally

1 up to him, he, I suggest, has to live with that.

2 And the Court has the right to say, "Look, I watched
3 him, I listened to him." The jury obviously didn't believe him
4 because Mr. Jackson -- if the jury believed Mr. Jackson, Mr.
5 Watson would have been convicted of conspiracy to distribute
6 narcotics because Jackson repeatedly claimed that they were in
7 it together and narcotics were here and narcotics were there.
8 When you couple that with the fact that you observed how he
9 behaved, there's no reason to believe him about anything after
10 his name.

11 Number two, you have to recall, and it's significant,
12 it's really significant, that Mr. Jackson along with Mr. Tucker
13 and Mr. Turner, Mr. Jackson conceded that he participated in a
14 conspiracy to obstruct justice in Recorder's Court. He
15 conceded that he had conversations, he was instructing people
16 as to how to testify. That also should say something to the
17 Court about the credibility of the one witness upon whose
18 testimony this allegation is based. Anybody that's willing to
19 do that, what -- what worth is there to their testimony?

20 If he were presented as a defense witness and Mr.
21 Buckley had what we had from tapes of his own phone -- and keep
22 in mind those tapes were his phone -- and you had tapes of him
23 talking to various people, plotting how they're going to mess
24 over a guy who they had something against by conspiring to
25 charge this man with whatever it was, I can't recall, something

1 about shooting or something, that tells you something about
2 what he thinks of the oath and what he thinks of the Court
3 proceeding, and I think the Court should consider that as well.

4 THE COURT: Okay.

5 MR. FISHMAN: Then we have to talk about -- and Mr.
6 Buckley and I obviously have a huge disagreement on it -- we
7 have to talk about the testimony of former Chief Godbee. I
8 brought up in my sentencing memo that Chief Godbee directly
9 contradicted him. Mr. Buckley said that he corroborated him.
10 In my supplemental memo, which I filed I think last week,
11 hopefully the Court had --

12 THE COURT: I got it, yes, mm-hmm.

13 MR. FISHMAN: -- I said that was an astonishing
14 assertion, and here's why. It's an astonishing assertion
15 because Mr. Godbee testified clearly, clearly -- and I'm not
16 denying that Mr. Buckley made some suggestions, as good lawyers
17 do, on cross-examination, but he clearly said, "I went to this
18 meeting because Derrick Coleman set it up. I had the meeting
19 with the guy. What the guy wanted was he wanted to get paid
20 quickly. He never said a word about theft, he never said a
21 word about diversion of money, and if he had done that, I would
22 have obviously launched an investigation." And that's
23 completely contradictory, not to the -- whether or not the
24 theft occurred, but the Court has to consider credibility.

25 Jackson sat here in court with his hand up in the air

1 and he told you and the jury that he had his meeting with --
2 that he called up Derrick Coleman and either he's going to meet
3 with the chief or he's going to call Bingo, which I found a
4 little bit hilarious, as I indicated in my sentencing memo,
5 because I thought only the ball players called him Bingo. But
6 in any event, and he made it very clear, "And I went in there
7 and I threatened the chief and if they don't do something and I
8 don't get my money, I'm going to the press," blah-blah-blah.

9 And here comes a witness with no reason to lie, I
10 mean nobody said that he's friends with Officer -- with Bryan
11 Watson or David Hansberry, and he tells you what really makes
12 sense, Judge, I mean it really makes sense. Chief Godbee, I
13 never heard -- I know he had to step down for some relationship
14 he had with a female, but I've never heard anybody say he was
15 involved in crookery or anything of that nature. And for him
16 to come in and under oath say, "Look, this is what happened,"
17 there's reason for you to believe that because why would he
18 have not launched an investigation? If the informant who is
19 there is telling him, "Hey, something funny went on, they stole
20 money, I got screwed," or whatever he says, there's no reason
21 why Chief Godbee wouldn't have launched an investigation. The
22 fact that he did not is circumstantial evidence at least that
23 what he meant and what he was saying was that Jackson never
24 raised that issue, and the only thing Gary Jackson wanted was
25 to get paid quickly.

1 Mr. Buckley raised an issue in his response that,
2 well, you know, the chief says it's the only time he met with
3 an -- with an informant. Well, that makes sense. The Court
4 heard voluminous testimony, saw pictures of the -- the crowd of
5 police officers around the money. This was a big deal.
6 There's no doubt it was a big deal.

7 And so it's -- and -- and you heard testimony not
8 just from Mr. Godbee but also from a couple of the police
9 officers that were higher up the food chain, couple of females,
10 I can't remember who, that when it got to a certain level, only
11 the chief can approve it. So that -- there's nothing odd to me
12 about the chief being the one who did the approving or the
13 chief meeting with the guy because he knows Derrick Coleman,
14 and Coleman asked him to meet and he meets with him. So that's
15 another issue.

16 The -- the final issue -- and I agree with the Court,
17 you -- when you asked Mr. Harrison something about Exhibit 1,
18 Exhibit 1 in my memo -- and I knew before the Court ruled -- I
19 think you may have had to rule because I think Mr. Harrison
20 wanted to bring it in -- the IA, the Internal Affairs report
21 clearly wasn't admissible in front of the jury, clearly,
22 there's no doubt about it. We didn't bring it up, I didn't
23 talk about it and it didn't get admitted.

24 But it's definitely something that the Court can
25 consider for this reason. I'm not saying that the Court has to

1 say, well, the IA report standing alone shows that there was no
2 crookery with respect to the seizure. But standing along with
3 all the other things, you have the right to consider the fact
4 that Internal Affairs, which the testimony showed certainly was
5 at least involved in the investigation of these defendants,
6 they didn't have any reason to try to cover for Mr. Watson.
7 They were part and parcel of the government's investigation.
8 And that's a pretty lengthy report; I think it's 17 or
9 18 pages.

10 And if you look at what -- I think it's Detective
11 Sergeant Lever, Lever, L-E-V-E-R I think it was --

12 THE COURT: Yep.

13 MR. FISHMAN: -- look at all the people he
14 interviewed and look at all the work that they did, and they
15 wound up with a conclusion that it was unfounded. That doesn't
16 control the Court's decision, I'm the first to agree with that,
17 but it's another piece of evidence to show that whatever else
18 it is that -- whatever Gary Jackson says, it's not corroborated
19 by anything else.

20 And that's why I think -- I think that -- that in
21 terms of the test, if the test is preponderance of the evidence
22 and the Court were sitting listening to Gary Jackson in a civil
23 case claim anything, would you have been able to make a
24 finding, "Well, yeah, I'm going to find certain facts based on
25 that guy's testimony"? And I suggest that you wouldn't, and

1 that's basically my argument with respect to the 14 points.

2 THE COURT: All right. Well -- well, let me -- let
3 me try to engage something a little broader here. My overall
4 sense, based on the -- the evidence at the trial, was that --
5 was -- was that Officer Watson was -- he was not the master,
6 mastermind, he was not the leader. To a certain extent I
7 believe he reported to his boss who was Sergeant Hansberry.
8 Now, now, what I believe is really irrelevant, but what I --
9 what I -- what I'm saying is I -- I think a reasonable view of
10 the evidence in the case would support that.

11 Now, the question I would have for you is if that's
12 true and if I made a finding based on the testimony of Jackson,
13 the corroborating factors, including the tape, the other
14 evidence that the government put in at trial on the -- on the
15 \$916,000, which I think I did in sentencing Hansberry, then the
16 question would become is there -- is there any way that the
17 relationship or the facts of the seizure that occurred with
18 that truck on July 26th, 2010 would get Mr. Watson out of the
19 application of this particular enhancement? Do you understand
20 my question?

21 MR. FISHMAN: I understand it exactly, and I see two
22 ways. Number one, nobody, not even Gary Jackson, said that
23 Bryan Watson was the thief. He said there was more money and
24 he was entitled to more money.

25 The testimony from Leavells was -- and I don't

1 remember the two officers' names; it might have been Napier and
2 Tourville.

3 THE COURT: Right.

4 MR. FISHMAN: If the Court recalls, remember he --
5 he -- he -- he said, "Well, they looked funny, they wouldn't
6 hug me."

7 THE COURT: Right.

8 MR. FISHMAN: But that wasn't Bryan Watson either.

9 THE COURT: Right.

10 MR. FISHMAN: And, in fact, there's no testimony
11 about Mr. Watson being involved in the seizure, the counting or
12 anything else.

13 So I guess that would be my response to that, that
14 even if the Court were to find that there was sufficient
15 evidence to consider the money towards the guidelines, that
16 either you could not make that finding as to Mr. Watson, or I
17 suppose the Court could grant a variance in a certain way. I
18 mean he -- he's there, and if you're going to hold him liable
19 in -- to some extent, I just don't see where the evidence was
20 that said Bryan Watson was part of it.

21 THE COURT: Part of the problem is that he was in
22 the -- the trailer or the van or whatever it was when -- when
23 Jackson taped -- and -- and I don't have a complete
24 recollection, although Mr. Buckley was kind enough to submit
25 the transcript of -- I'm confident they never spoke of a

1 million dollars or \$916,000 or -- or that -- that -- that sort
2 of thing. I remember they talked a lot about things going
3 forward and how it was to work.

4 But -- but anyway, what else would you like to say on
5 Objection 7 and 9?

6 MR. FISHMAN: I just wanted to I think correct the
7 Court. I think -- I think you were talking about the tape that
8 was made in the hotel room when Mr. Jackson received the
9 250,000 from the city, is that -- is that what you're talking
10 about, that conversation?

11 THE COURT: He made his own tape of the --

12 MR. FISHMAN: Right.

13 THE COURT: Yeah.

14 MR. FISHMAN: But I think it was in a hotel room
15 rather than inside of a van, and I think Mr. Buckley agrees
16 with that.

17 THE COURT: I'm sorry. I thought it was like in --
18 in a vehicle or something.

19 MR. FISHMAN: I don't know. You know, you have the
20 tape. You have the transcript rather. We heard the tape.

21 THE COURT: Okay.

22 MR. FISHMAN: Ninety-five percent of the conversation
23 is Mr. Hansberry and -- and Mr. Jackson. I don't think that
24 that conversation in and of itself makes Mr. Watson part of any
25 theft, even if there was a theft and even if the Court finds by

1 a preponderance there's a theft.

2 So other than the -- the list of things I think that
3 challenges the credibility of Mr. Jackson and my comments about
4 there being really nothing that says that Mr. Watson was a part
5 of it -- in fact, you know, Judge, I don't think, and maybe Mr.
6 Buckley will correct me, I don't think there was any testimony
7 at all as to what position Mr. Watson was in when the truck was
8 stopped and the money was taken. I know for sure he wasn't in
9 the truck because I know it was those other two officers
10 because Leavells said so. But I don't know that there was any
11 testimony that said he was on surveillance or he was -- who
12 knows where he was. There was nothing that said he was part of
13 that.

14 THE COURT: The hotel conversation did not occur the
15 same day as the seizure.

16 MR. FISHMAN: No, no.

17 THE COURT: Right.

18 MR. FISHMAN: In fact, it's not just not the same
19 day. Remember that the seizure occurs, the money's counted and
20 all the brouhaha is made, and then he goes to see Chief Godbee,
21 and after that is -- is the -- is the hotel.

22 THE COURT: Okay. All right.

23 MR. FISHMAN: That's my argument as to why it
24 shouldn't be applied as to Mr. Watson.

25 THE COURT: Okay. Now it's Mr. Buckley's turn.

1 MR. BUCKLEY: Thank you, Your Honor.

2 And Mr. Fishman has covered a lot of ground. I think
3 that, first of all, I'd like to talk about Exhibit 1, which the
4 defendants both appended to their Sentencing Memoranda, and
5 it's the Internal Affairs investigation report. And, Judge,
6 it's a little misleading and I'll tell you why. The Internal
7 Affairs investigation referred to did not relate to the theft
8 of the nearly \$1 million in -- in July of 2010. That report
9 was restricted solely to the shrinkage from the money that
10 Hansberry, et al brought into the system and was ultimately
11 deposited. If the Court will recall, Gary Jackson has always
12 maintained that it was \$3 million.

13 THE COURT: Right.

14 MR. BUCKLEY: His testimony was corroborated in
15 various ways. Hansberry reported a loan, having found a tally
16 sheet in the cab of a truck when money was seized, that said
17 2.3 million, but when he brought it to the station, it was only
18 2.1 million.

19 THE COURT: Right.

20 MR. BUCKLEY: And by the time it was deposited at the
21 bank, it was only 2.084 million.

22 THE COURT: Right.

23 MR. BUCKLEY: And that report that the defendants
24 have submitted refers only to that shrinkage. At that time the
25 IA didn't even know about the \$1 million theft. And -- and

1 that shrinkage is important because Chief Godbee on the stand
2 when I cross-examined him -- Mr. Godbee, he's no longer the
3 chief, let's get that clear -- Mr. Godbee said that had he
4 known about that shrinkage, it would have caused him grave
5 concern, that's what he said. He said he wasn't aware of it,
6 and if he had been, it would have caused him grave concern.

7 THE COURT: You -- you're talking the shrinkage of
8 \$15,370?

9 MR. BUCKLEY: Yes, sir.

10 THE COURT: Yeah, okay.

11 MR. BUCKLEY: Yep. And more --

12 THE COURT: Go ahead.

13 MR. BUCKLEY: Go ahead.

14 THE COURT: No, you go ahead.

15 MR. BUCKLEY: No. I'm simply saying he -- he said he
16 wasn't even aware of it.

17 But -- but the -- the point I'm making, Your Honor,
18 is that that report had nothing to do with the \$1 million
19 theft. The defendant -- one of the defendants put in their
20 Sentencing Memorandum that -- that the defendants were
21 exonerated with this stuff. Not even close to being accurate.
22 That report dealt only with the shrinkage of \$15,000.

23 With -- with regard to Mr. Godbee's testimony, Your
24 Honor, you know, if there was one thing, if there was one
25 aspect to Gary Johnson's (sic) testimony that seemed at all

1 incredible it was that the chief of police of the City of
2 Detroit would meet with him and an NBA Hall of Famer in a
3 restaurant in the suburbs to talk about his getting a reward.

4 And I was astonished when Mr. Fishman called him as a
5 witness, him being Mr. Godbee, because Mr. Godbee did largely
6 corroborate what Gary Jackson said. Gary Jackson said, "I
7 wanted a meeting." He got a meeting. He said, "I met him out
8 at a restaurant in Oakland County." That's what Mr. Godbee
9 said. Mr. Godbee said they met in a curtained-off area.

10 The only place where their testimony differed, Mr.
11 Godbee's and Mr. Jackson's, was that Mr. Jackson told him, "I'm
12 tired of waiting, and if I don't get my money, I'm going to go
13 to the mayor and I'm going to report this." Mr. Godbee didn't
14 recall that. Now, I thought I was at the Watergate hearings.
15 He didn't recall that. He didn't recall any reference to Mr.
16 Jackson going to the mayor, but he didn't deny it either. He
17 said, "That's not my recollection."

18 So Mr. Fishman and I, you know, clearly will never
19 agree on how that testimony operated in open court.

20 THE COURT: Right.

21 MR. BUCKLEY: But, Judge, quite frankly, Mr. Fishman
22 says that the jury rejected Gary Jackson's testimony. To the
23 contrary, they erased it. They accepted it and that's why they
24 found the defendant guilty of the most serious count contained
25 in the indictment.

1 THE COURT: Right.

2 MR. BUCKLEY: Their verdict was clearly a compromise,
3 Judge, and I'm not going to get into that, but it was clearly a
4 compromised verdict, it was a windfall for the defendants, but
5 they did come back with the most serious count and convicted.

6 And if the Court will recall, their question, after
7 deliberating for a very short time, was, "If we find guilty on
8 Count 1, do we need to find guilty on any other count?" The
9 response, the answer by the Court was correct, no, and that's
10 precisely what they did.

11 But anyway, Your Honor, I respectfully suggest that
12 Gary Jackson's testimony was credible. The Court had the
13 opportunity to see him on the stand. And I understand Mr.
14 Fishman's frustration with Gary Jackson. Gary Jackson is an
15 individual who's a strong individual, he's charismatic, and I
16 could see how Mr. Fishman was frustrated with his inability to
17 get Mr. Jackson to make concessions that Mr. Jackson didn't
18 believe were true.

19 So in any event, Judge, I think there's more than
20 enough evidence. And the last thing, Judge, is that I think
21 it's accurate that Mr. Watson -- let me say this. He was
22 convicted of conspiracy. We don't need to prove that he went
23 up into the cab of that truck and took that money out. He was
24 convicted of conspiring with Mr. Hansberry.

25 And if the Court would look at that recording of the

1 meeting between Gary Jackson and Hansberry in the hotel room,
2 at one point Hansberry says, "Look, if you or your people get
3 arrested doing drug dealing, I'm going to come and get you.
4 Who else can give you that?" And Jackson says, "He just -- he
5 was already telling me that." He was referring to Mr. Watson.
6 And Mr. Watson says, and it's in the transcript, "I told you
7 so, I already told you that." And then at the very end of that
8 meeting after Hansberry leaves, Watson whispers to Jackson,
9 "Look, one of the things we're going to do," and I'm
10 paraphrasing, "is use dummy kilos, and I -- I can show you how
11 to do that." So he was very much involved in this and he was
12 very much involved in sharing the proceeds of the close to a
13 million dollars stolen.

14 MR. FISHMAN: Judge, may -- may I respond briefly to
15 that?

16 THE COURT: Of course.

17 MR. FISHMAN: Okay. Number one, I agree with respect
18 to the IA report. It was the sixth thing I brought up as to
19 why you shouldn't believe Mr. Jackson. I agree they weren't
20 confronted with an allegation of theft from Jackson. Why?
21 Because Jackson never made the allegation. It's consistent
22 with what I'm arguing about Mr. Godbee. Jackson never alleged
23 it to anybody other than himself and hollering to Hansberry
24 about it. He never made the allegation. That's why it wasn't
25 investigated. And the Court can see what they were

1 investigating was why was the count off? It turned out the
2 machines were lousy, if I remember, that was their conclusion.

3 But more importantly, unusually for Mr. Buckley who's
4 got as sharp a mind a mind as anybody I've ever had cases with,
5 he didn't really answer your question as to why Mr. Watson
6 should be held accountable for this \$916,000. He talked about
7 other things, but there isn't any evidence in the record that
8 says that he was part of the theft itself, as the Court knows,
9 or that he at some point in time got any of the money. So
10 therefore the Court could rule, as you did in the last case and
11 yet still rule, that it doesn't apply to Officer -- to Mr.
12 Watson, which is 14 points. So that's -- that's the end of it.

13 MR. BUCKLEY: Judge, if I could respond briefly, and
14 you know, we could go round and round, but the fact of the
15 matter is that supposedly Officer Leavells was to control Gary
16 Jackson, but Officer Watson was very much involved in that.
17 And -- and the testimony of Gary Jackson was that after he
18 provided the tip, after the truck was stopped, he went to a
19 hotel room where he was waving a brown paper bag with \$300,000
20 in it, the ten percent that it was Officer Watson who promised
21 him. Because if the Court will recall, Jackson didn't even
22 meet Hansberry until the meeting in the hotel room when he was
23 brought the premium payment, and -- and that was in August of
24 2010. So Mr. Watson was very much involved in this.

25 And Mr. Jackson testified that when the money was

1 seized and he's in the hotel room waiting for his skimmed money
2 off the top promised to him, ten percent, by Mr. Watson who
3 knew it was 3 million, Mr. Watson was in the background saying,
4 "We're sweet." And then Mr. Watson said, "Ask Jackson if the
5 money is serialized." He was very much involved in this.

6 THE COURT: Okay.

7 MR. BUCKLEY: Shortly after that, Mr. Jackson got a
8 second call from Mr. Leavells who said, "Hey, you know what?
9 I'm sorry, we can't bring you that off the top because a
10 supervisor came out and we weren't able to take it." Well,
11 that's when he'd been lied to, Judge, and that's why he
12 recorded the meeting when they brought him the \$250,000 premium
13 payment.

14 THE COURT: Okay. All right. Okay. Thanks to both
15 lawyers. I'm going to rule on objections 9 and 7, and I'm not
16 going to -- I'm not going to say anything other than that this
17 is really difficult for me.

18 Number one, I think I have to apply -- as a matter of
19 law, I think I have to apply the enhancement because, number
20 one, the analysis, in my view, has to be con -- consistent, the
21 legal analysis based on the facts has to be consistent with
22 what I did in the previous sentencing. And I -- I -- I think
23 the government established beyond a preponderance of the
24 evidence based on not just the testimony of -- of Jackson but a
25 number of other things that 3 million was the number which was

1 reduced to 2.1 and that 900, 916 went -- went missing, and
2 that's the number I used to -- to enhance the sentence by -- by
3 14 levels.

4 Now, if I relied on those -- on those facts and that
5 established in Mr. Hansberry's sentencing the application of
6 the 14 levels, then the only way I can't apply the enhancement
7 in this particular case is to -- to look at different facts.
8 And I would -- I would, in all honesty, having gone through
9 this whole thing, say to all of you, number one, that tape that
10 Jackson made established to my satisfaction a number of things,
11 including Hansberry's guilt beyond a reasonable doubt and --
12 and -- and his leadership role, but actually his understanding
13 of what had happened with the -- with the -- ultimately the
14 \$2.1 million that were turned in.

15 Secondly, I looked pretty hard and I couldn't find
16 any hard evidence of the sort that was lodged by the United
17 States against Mr. Hansberry as to Mr. Watson's presence or
18 participation on the scene July 26, 2010. And then this would
19 go for Hansberry's sentence as well or at least guideline range
20 as well. The acquittal on Count 7 as a logical matter that Mr.
21 Fishman argues skillfully would lead to a consideration that if
22 he wasn't convicted of -- of distributing drugs, he might not
23 be -- he might not be responsible for the drug money that was
24 seized on that particular day.

25 But -- but I think the balance of the evidence shows,

1 and as a matter of law under the guidelines and the com --
2 commentary that goes with them, that if the offense involves
3 550 to \$1.5 million, I have to enhance by 14 levels, and I
4 think that it does.

5 So accordingly, what I am going to do is I'm going to
6 overrule Objection Number 9 and Objection Number 7 and find
7 that the 14-level enhancement based on the \$900,000 figure
8 applies. But I intend to entertain from Mr. Fishman an
9 argument for variance based on those three factors and the
10 absence of that evidence that I just mentioned because I think
11 in fairness, while the -- while the enhancement exists, the 14
12 levels of it may very well overstate what -- what Mr. Watson
13 should be looking at. So that's the ruling of the Court
14 with -- with regard to Objection Number 7 and Objection Number
15 9. They are overruled for the reasons that I -- that I just
16 stated.

17 All right. With that, let's go to Number 8 and the
18 two-level enhancement. Mr. Fishman, this deals with more than
19 one act of extortion. Go right ahead.

20 MR. FISHMAN: I heard the Court's ruling earlier. I
21 think you -- you did not apply that enhancement if I heard it
22 correctly. And if that's the case, I don't have anything more
23 to say. I think it was the same situation.

24 THE COURT: Okay. Mr. Buckley?

25 MR. BUCKLEY: Judge, and to a certain extent, I made

1 my objection during Mr. Hansberry's sentencing. I guess I
2 would just ask the Court to consider that, particularly with
3 regard to Mr. Watson, the vast majority of Lamont Calhoun's
4 testimony dealt with Mr. Watson and their illegal dealings
5 together and the fact that Mr. Watson -- it wasn't just drug
6 dealing, Judge. It was extortion. It was drug dealing with a
7 police officer. It was a police officer under color of
8 official right did not arrest Lamont Calhoun, a known drug
9 trafficker, and who -- and -- and did engage in some measure of
10 drug trafficking with him; had him set up rip-offs, provided
11 him with drugs to sell and so on.

12 So they're -- they're -- they're apples and oranges,
13 and to say that simply because the jury -- and again, I submit,
14 with all due respect, this was a compromised verdict -- just
15 because they found Mr. Watson not guilty of drug trafficking,
16 they did find him guilty of conspiracy to extort.

17 THE COURT: Right.

18 MR. BUCKLEY: And Lamont Calhoun's testimony clearly
19 showed that there was more than one act of extortion
20 perpetrated in the commission of that conspiracy.

21 THE COURT: Mm-hmm.

22 MR. FISHMAN: Judge, I -- I guess I need to respond
23 now because we keep hearing about Lamont Calhoun as if he's
24 some sainted witness that people believe. They didn't believe
25 him. Otherwise he's convicted of conspiracy to distribute

1 narcotics.

2 This business about a compromised verdict, I think
3 we're not even allowed to talk about that. But if we were
4 talking about it, the compromise is the other direction. They
5 acquitted on nine out of ten counts, eight out of nine as to
6 Mr. Watson. So I think if you're going to talk about a
7 compromise, all right, we'll nail him on one thing. I mean I
8 just don't see how this is what I would in 43 years look at as
9 a compromised verdict.

10 But Lamont's testimony was rejected, it wasn't
11 accepted, it was not accepted, because if it was accepted, he'd
12 have been convicted of the drugs and of the conspiracy. And
13 therefore the Court should make the same ruling that you made
14 in Mr. Hansberry's and eliminate these two points.

15 THE COURT: All right. Well, I believe this is a
16 close call, as I said earlier, but I'm going to sustain
17 Objection Number 8. I'm not going to enhance by two levels.
18 It was one count of conviction. It was a conspiracy to
19 convict.

20 Mr. Buckley may very well be correct, and, in fact,
21 maybe let's go as far as to say he probably is correct, but I
22 can't say that as a judicial officer. As a matter of fact,
23 that would cause me to substitute what may have been a jury's
24 different version of the facts that supported conviction on
25 Count 1, and we do know that there was one act of extortion

1 that would have supported conviction on Count 1. We do not
2 know, I do not know whether or not there was beyond that.

3 And so as a conservative legal matter I sustain
4 Objection Number 8 and I will not level the two-point
5 enhancement for more than one act of extortion. And whereas
6 it's a close call, I -- you know, I do feel confident that in
7 my best judgment, that's -- that's the way we may come down.

8 Okay. Objection Number 10 deals with the four-level
9 enhancement for being an elected public official or any other
10 public official. This is Mr. Fishman's argument that -- that
11 he was a -- a lowest possible ranking member of the DPD and not
12 a -- and not a public official that would be in a sensitive
13 position to find by 2C1.1(b) (3).

14 Go ahead, Mr. Fishman.

15 MR. FISHMAN: The Court just pretty much quoted what
16 I was going to begin with, which is in my Sentencing Memo, that
17 you have to be either an elected public official or any public
18 official in a high-level decision-making or sensitive position.
19 And as the Court said, my first argument is that he's a police
20 officer, the lowest rank in the Detroit Police Department. The
21 Court heard the testimony about chain of command; it was talked
22 about over and over again. It was obvious from the testimony
23 of everybody that the lowest form of police officer is a person
24 like Officer Watson.

25 Secondly, Application Note 4(A) which I cited to the

1 Court -- to the Court made an attempt to define that phrase
2 "high-level decision-making or sensitive position," and it
3 said, quote, it's "a position characterized by a direct
4 authority to make decisions for, or on behalf of, a government
5 department, agency or other government entity, or by a
6 substantial influence over the decision-making process."

7 I don't quarrel with the fact that the Application
8 Note says a police officer is a public official who holds a
9 sensitive position, but I say in this case, given what you've
10 heard about Officer Watson's position, about the authority of a
11 police officer, was he someone who had the ability to influence
12 the decision-making process? I think he's in an entirely
13 different situation than a sergeant or a lieutenant such as --
14 as Mr. Hansberry. This is a PO who has no authority whatsoever
15 over anybody other than himself, and he certainly had no
16 ability to influence the decision-making process.

17 So I suggest to the Court that although you could, if
18 you wanted to, twist yourself into a pretzel and say, well,
19 yes, there's this reference in the Application Note and there's
20 a case here, a case there, you heard the case and you know what
21 Officer Watson's position was in the hierarchy, and I don't
22 believe you should apply the enhancement.

23 I should also add, even in the event that you do,
24 this seems to me to be another place where a variance argument
25 would be appropriate. Even if you were to apply the

1 enhancement, doesn't mean you couldn't make a finding as part
2 of a variance argument saying, okay, fine, there's a case, you
3 know, U.S. vs. so and so. The note says a policeman can
4 qualify for this, but let's look at the facts of this case and
5 see how many decisions this guy was influencing.

6 And that's -- that's my position. Either it
7 shouldn't be there at all or the Court should certainly
8 consider a variance as to that enhancement.

9 THE COURT: Okay. All right. Thank you very much.
10 Mr. Buckley?

11 MR. BUCKLEY: Thank you, Your Honor.

12 I don't think the Court has to contort itself into a
13 pretzel to make this finding. The Application Note 4(B) says
14 expressly, and I quote, "Examples of a public official who
15 holds a sensitive position include a juror, a law enforcement
16 officer" and so on. So, Judge, quite clearly it applies.

17 And the fact remains that although Mr. Watson had the
18 rank of police officer, there was testimony that he had been a
19 veteran of the police department for many years. He had been
20 in narcotics trafficking enforcement longer than Mr. Hansberry,
21 and he was the crew chief, he was second in command. Arthur
22 Leavells testified quite clearly that Mr. Watson was second in
23 authority. And -- and that -- that authority was evidenced
24 during the so-called power moves meeting at the hotel in August
25 of 2010 where it's very clear that Watson had been talking to

1 Jackson and telling him, "Listen, my man Hansberry can set you
2 free; all you gotta do is place a call if you get popped."

3 So, Judge, again, I think that the four-level
4 enhancement for high-level sensitive position is appropriate in
5 this case.

6 THE COURT: Okay. I think Mr. Buckley's citation to
7 the guideline commentary which I referenced earlier is
8 dispositive, and notwithstanding the correct arguments that Mr.
9 Fishman makes about his client, he -- he was a law enforcement
10 officer, he -- he took the oath, and I believe he would have
11 the type of position that this type of a -- this type of an --
12 of an enhancement would most certainly apply to. And therefore
13 Objection Number 10 is overruled and the four-point enhancement
14 will apply.

15 With that, let's go to 11, objection 11, page 9,
16 paragraph 38. We discussed earlier 3B1.1(b), manager or
17 supervisor of criminal activity that involved five or more
18 people. I didn't believe that the evidence would permit an
19 inference of supervision by Mr. Hansberry of five or more, and
20 I cut the -- I cut the enhancement back to two points for being
21 a manager or supervisor or otherwise not laid out in the
22 subsection.

23 The question now then is does Mr. Watson get that or
24 does he get nothing? Mr. Fishman argues that he was not a
25 leader, manager or supervisor within a common meaning of those

1 words in -- in any sense.

2 Go ahead, Mr. Fishman.

3 MR. FISHMAN: The Court's reading from what I said in
4 the Sentencing Memo, and I think that that's my position today.
5 This business about the crew chief, you know, they called him a
6 crew chief at some point in time. I think you heard from I
7 want to say it was Sergeant Herbert, it was a female officer,
8 that said the extra duties he had consisted of keeping track of
9 payments that were made to informants, and she thought he did a
10 really fine job of keeping track of that.

11 I didn't hear any testimony and neither did the Court
12 I don't think that he was supervising, directing anybody to do
13 anything. He was convicted of what they say his participation
14 was, but it was clear as a bell from the testimony that
15 Sergeant Hansberry was the head of the operation. If there was
16 a leader, it was him. Mr. Watson was no more leader than
17 Arthur Leavells, who, of course, has no leadership enhancement,
18 or anybody else who was working on that crew if they ever would
19 have brought someone else to court. There was one leader and
20 you assessed two points for it, which I think you were correct
21 in that instance, but I don't think there's anything to support
22 it here.

23 THE COURT: Okay. Very good.

24 Mr. Buckley, go right ahead.

25 MR. BUCKLEY: Judge, as -- as -- as the Court ruled,

1 I -- I think that the -- the -- if the Court's going to find
2 that there were not five supervisees, and, again, we maintain
3 that there were, with all due respect, 3B1.1 sub-section (c)
4 says, "If the defendant was an organizer or leader," we didn't
5 seek that, "or a manager or supervisor any criminal activity
6 other than that described in (a) or (b), increase by 2 levels."

7 Again, Judge, as I understood it, the Court's basis
8 for assessing only two levels to Mr. Hansberry was that the
9 Court wasn't satisfied by a preponderance that there were five
10 or more. I think I would ask the Court to make the same
11 finding here then, so that if there weren't five or more, Mr.
12 Watson was still a manager or supervisor. The testimony was
13 clear that Gary Jackson was dealing with him originally. He
14 didn't even meet Hansberry until well after six or weeks or so
15 after the \$3 million was stolen. Jackson was dealing with
16 Watson and Leavells. He didn't meet Hansberry until that
17 meeting, the power moves meeting in the hotel. And, again,
18 during that recording when Hansberry says, "If you get
19 arrested, if you get popped, you call me, I'll come get you,
20 who else can give you that?", Watson says, "I told you that."
21 Jackson says, "He told me that."

22 There's no question, Judge, that he was a manager or
23 supervisor in -- in regard to criminal activity here, so we'd
24 ask for the two points if the Court is not inclined to give
25 three points.

1 THE COURT: Okay.

2 MR. FISHMAN: Judge, may -- may I respond to that?

3 THE COURT: Well, let me say something before I
4 forget.

5 MR. FISHMAN: Okay. Okay.

6 THE COURT: Not to parse words, but, you know, I mean
7 these are like -- these are really difficult things. And, you
8 know, that testimony or that taped material, I told you that --
9 I mean that could mean Watson was saying Hansberry would come
10 get you. I mean I -- I -- I guess that's an arguable way to
11 interpret those -- that -- that quote. But I -- I understand,
12 obviously I understand Mr. Buckley's argument.

13 Go ahead, Mr. Fishman. How would you like to
14 respond?

15 MR. FISHMAN: The fact that Mr. Watson had contact
16 with Gary Jackson means absolutely nothing in terms of
17 leadership. Every one of these narcotics officers, including
18 Leavells, including ones that nobody accused of having -- doing
19 wrongdoing, all of them have contact with people in the street.
20 What does that have to do with leadership? If he, Watson, says
21 to Hansberry or says to Jackson, "See, in told you so," so
22 what? I mean how does that make him a leader? Jackson was his
23 contact, whether it's for criminal means or whether it's for
24 legal means, whatever. What does that have to do with whether
25 you're in leadership any more than Arthur Leavells having

1 contact with Jackson or with Calvin Turner who he grew up with?

2 It's a ridiculous notion, it really is.

3 MR. BUCKLEY: Well, if I could respond, Judge,
4 briefly --

5 THE COURT: Go ahead.

6 MR. BUCKLEY: -- and then I'll be done.

7 One thing I forgot to tell the Court is there was
8 also a recording of September 14th, 2014, a recording of a
9 meeting between Mr. Leavells and Mr. Watson.

10 THE COURT: Yep, I have the transcript here.

11 MR. BUCKLEY: And during that meeting, and it's --
12 it's recorded, Leavells, who's then cooperating with the FBI,
13 gives Mr. Watson \$5,000 in cash, it's counted out, and the
14 testimony was that Mr. Watson believed that was a preexisting
15 drug debt from Gary Jackson.

16 MR. FISHMAN: So what?

17 MR. BUCKLEY: I mean that -- that -- so what it again
18 shows, manager or supervisor. And then Mr. Watson gave a
19 thousand back to Leavells and said, "Your cut." He made the
20 decision to give money back. He was a manager and a supervisor
21 of this criminal activity.

22 THE COURT: I have that right here where they're
23 talking about Greedy, Jeedy.

24 MR. FISHMAN: Right.

25 THE COURT: And it's Jackson --

1 MR. FISHMAN: And I'm saying the same thing to the
2 Court. So what? What does that have to do with leading
3 anybody? Let's say he and Leavells are two of the biggest
4 crooks in the world and they split up crooked money. What does
5 that have to do with leadership? Nothing.

6 MR. BUCKLEY: Because he --

7 MR. FISHMAN: Lead -- leadership, Judge --

8 THE COURT: All right. All right.

9 MR. FISHMAN: Okay. Okay. All right.

10 THE COURT: All right. Okay. All right. I -- okay.
11 You know, Mr. Buckley's position is sound, and -- and yet I'm
12 not going to apply the enhancement and here's -- here's why.
13 Because I -- I mean I came to this and I -- I told you all
14 earlier I didn't believe Watson found himself in the same
15 position in this conspiracy that Hansberry did, and I think the
16 application, as a legal matter, that I made with Hansberry was
17 proper and entirely supportable by the evidence.

18 Now, there's a good chance that my memory of the
19 evidence and Mr. Buckley's comprehensive and encyclopedic
20 recollection of it no doubt differs, and -- and -- and should,
21 you know, there be an appeal and I'd be wrong, that -- that's
22 the way it is.

23 But -- but my sense was that Watson was not -- was
24 reporting to Hansberry and more on the level of -- of Leavells.
25 And what tipped my decision on this particular enhancement was

1 that I went back and looked at the Plea Agreement of Leavells,
2 and I realized that was bargained for and this case was tried
3 and we're talking about two different contexts, but he did not
4 get the enhancement. And from the way I read the transcripts
5 and looked at the overall testimony, Leavells and -- and --
6 and -- and Watson were on the same level and Leavells was not a
7 leader and therefore neither was Watson.

8 And I would decline to exercise the enhancement under
9 3B1.1, which would knock three points off of Mr. Hampstead's
10 calculation along with the previous two that I didn't enhance
11 on the -- on the more than one act of extortion. So we will be
12 five levels lower at this -- at this point.

13 All right. Moving to Number 12, this is Mr.
14 Fishman's objection to Offense Level 37. I believe that
15 objection is moot because I agreed with him and I'm going to
16 find a lower range.

17 Objection Number 13 is a similar objection in which
18 he says that the Offense Level is 16. I will sustain that in
19 part because it's not 37 and overrule the rest of it because
20 it's not going to be 16 either.

21 Objection 14 says that the guideline range should be
22 21 to 27 months and not 210 to 262. Again, sustained in part
23 because I believe it's a lower guideline range, but it's not 21
24 to 27 months.

25 And then that gets us to the sentencing disparity

1 issue which we can address now and probably should because
2 Mr. -- Mr. Hampstead took the position that there were no
3 sentencing disparity factors, but we can hear from that in
4 allocution as well.

5 Go ahead, Mr. -- Mr. Fishman.

6 MR. FISHMAN: Thank you. Judge, just for my
7 arithmetic purposes, are we now at 32 and Criminal History I?

8 THE COURT: 32-I is where I'm at.

9 MR. FISHMAN: Okay.

10 THE COURT: And I'll make findings on that, but
11 that's what I've got at this point.

12 MR. FISHMAN: Okay. That's what I wrote down.

13 THE COURT: Yeah.

14 MR. FISHMAN: The sentencing disparity issue to me is
15 really, really interesting in this case, particularly given the
16 government's objection to the Court considering it, and I'm
17 going to try to deal with all of those things in -- in my
18 discussion of it. And I did try to respond to the government's
19 position in my supplemental Sentencing Memo, but I'm going to
20 try to do it all at once here in this discussion.

21 Number one, for purposes of this discussion, Judge,
22 I'm willing to confine the disparity issue to Arthur Leavells
23 and Bryan Watson, although I -- for purposes of the discussion,
24 it doesn't mean I'm abandoning what I have in my Sentencing
25 Memo. The Court's clear with -- good with that?

1 THE COURT: Yeah, of course.

2 MR. FISHMAN: You know, they're different situations.
3 Gary Jackson, Fred Tucker and Calvin Turner were not police
4 officers, they're just street dope dealers. And I can see when
5 you look at the sentencing disparity section of 3553(a), it
6 does talk about similarly situated defendants. So clearly, the
7 most similarly situated defendant is Arthur Leavells.

8 I want to address the two things that the government
9 suggested. First, if I can, the first one being that we can't
10 really say that there's going to be disparity because Mr.
11 Leavells hasn't yet been sentenced. I think that we all don't
12 have to have our heads in the sand. We know what the guideline
13 range that was agreed to with respect to Mr. Leavells and that
14 was 46 to 57 months. We know there's going to be a 5K motion
15 by the government.

16 THE COURT: Right.

17 MR. FISHMAN: And I think it's safe to assume,
18 because I've never seen anything otherwise, that the Court is
19 going to grant it and give something less. It might be two
20 months less or it might be who knows what, but I think we have
21 a ballpark.

22 THE COURT: Right.

23 MR. FISHMAN: Okay. The first argument that they
24 made, and they cited a case that I did read in the Seventh
25 Circuit, the government says that if there's one who cooperates

1 and one who doesn't, that therefore there's no such thing as
2 sentencing disparity. I'm -- I'm paraphrasing obviously. I
3 don't think the case says that and I don't think that the issue
4 of sentencing disparity can be that readily put aside.

5 There's no doubt that someone who cooperates and
6 makes a Plea Agreement first and who cooperates is in a
7 different position, but it doesn't change the fact that in
8 terms of everything else, their background, their
9 participation, they are still similarly situated. I'm not
10 saying to you that the issue of sentencing disparity would mean
11 you have to give Mr. Watson the same sentence that you give Mr.
12 Leavells. Clearly, both the case that Mr. Buckley cited and
13 common sense tells us that that's different.

14 But we have to recall, the Court's now made -- made
15 rulings that have changed the guideline range. When I wrote my
16 Sentencing Memo, I had the Probation Department's ranges, which
17 were off the charts, 210 to 240, and the government's range,
18 which was over the statutory maximum. So when I wrote that
19 they were asking for Mr. Watson to receive over four times the
20 sentence that Mr. Leavells would get if he were sentenced to
21 his guideline range, that was when I thought that that's where
22 we were at.

23 Even if the position were now at -- and I'm not
24 certain what 32-I calls for, and if I may ask Mr. Hampstead
25 what --

1 THE COURT: 121 to 151 is that range.

2 MR. FISHMAN: Okay. So at 121 to 151, we're still
3 talking about almost three times, and I'm just going by Mr.
4 Leavells' guidelines, not by what he might wind up with, but a
5 sentence of 121 would be almost three times what Mr. Leavells
6 would get for, as the Court said, not just essentially the same
7 conduct but essentially the same role, and I think that that's
8 something legitimate for the Court to consider. I don't think
9 that the cases that say that it's different when someone
10 cooperates means you can't consider the issue of disparity at
11 all.

12 And then the numbers pretty much tell the story that,
13 you know, if -- if I'm -- I -- I guess this is really more of a
14 variance issue, isn't it? It's really -- we're talking about
15 disparity, but it's something I'm going to be arguing to the
16 Court in terms of variance, so I guess I have nothing more to
17 say about it now.

18 THE COURT: Okay.

19 MR. FISHMAN: Okay?

20 THE COURT: I -- I think I can save time, and if you
21 want to follow up, Mr. Buckley, you can. I'm going to overrule
22 the objection and I'm going to sustain the probation officer
23 there. I mean the -- the -- the simple fact one has to wrestle
24 with is that let's say my view of the evidence from which I've
25 made certain legal conclusions on the guideline range and the

1 enhancements have ever -- already been stated. Let's say
2 that's correct. Again, Mr. Buckley may very well and indeed
3 probably doesn't think they are, but let's say that it is.
4 Then I think Leavells and -- and -- and Watson are -- are
5 similarly situated and -- and, absent any other factors, should
6 get a similar sentence.

7 But the -- the difference is that Watson ultimately
8 attached himself to the idea that he -- he would go to trial
9 and not cooperate with the government, and indeed Mr. Leavells
10 did something quite different and came in and testified, and
11 both in terms of the original negotiation he made with the
12 United States as well as the ultimate sentence he gets should
13 be -- should be credited for that and wouldn't support
14 disparity as a matter of law. But that -- that's why I would
15 overrule the objection.

16 Anything else you want to say, Mr. Buckley, go right
17 ahead.

18 MR. BUCKLEY: Real -- real briefly, Judge, and I
19 thank you.

20 But there's -- there's just one point I think needs
21 to be made for the same reasons, Judge, I sought the
22 manager/supervisor enhancement. And I'm not asking the Court
23 to accept that; I accept the Court's ruling.

24 THE COURT: Okay.

25 MR. BUCKLEY: But -- but -- but there was a

1 difference in the way they were positioned in the scheme, and
2 that is, ironically, Arthur Leavells pled guilty to the drug
3 count or essentially the drug trafficking --

4 THE COURT: Right.

5 MR. BUCKLEY: -- that Mr. Watson was acquitted of.

6 I -- and so the other thing is that he testified
7 about the secret squirrel meetings between Mr. Hansberry and
8 Mr. Watson. They were the two leaders, Judge, of that crew.
9 They were the two leaders of -- of this extortion and activity
10 and Leavells was kind of on the outside if you recall.

11 So I would just say that there's no sentencing
12 disparity here, and it -- and it isn't right because, quite
13 frankly, Mr. Leavells has not been sentenced yet. And that's
14 all I have to say.

15 THE COURT: Okay. All right. Very good. Fifteen
16 is -- is overruled for the reasons just stated, and I believe
17 that gets us through all of our objections.

18 Anything else from you on the objections to the
19 report or the findings I made at this point, Mr. Fishman?

20 MR. FISHMAN: No, sir.

21 THE COURT: Mr. Buckley?

22 MR. BUCKLEY: No. Thank you, Your Honor.

23 THE COURT: Okay. The Offense Level is 32, the
24 Criminal History Category is I. The guideline range is 121 to
25 151 months. The findings of the probation officer are relied

1 upon for the Court in arriving at the appropriate sentence.
2 The entire factual record of the case, including the trial
3 testimony and exhibits that the Court heard, will inform its
4 ultimate sentencing decision. And I think we're ready to go
5 to -- to go forward from -- from there. All right.

6 MR. FISHMAN: If I may have Mr. Watson come up. You
7 want to --

8 THE COURT: Yeah, come on up, Mr. Watson. Mr.
9 Watson's here in court. He's now approached the microphone and
10 is standing next to Mr. Fishman.

11 I don't find any reason for departure. None has been
12 authorized from the United States and Mr. Fishman's not
13 specifically seeking a department in his papers. He may and in
14 all likely -- likelihood would seek a variance from the 121 to
15 151 sentencing guideline range.

16 Again, unless Mr. Buckley corrects me, the issue of
17 forfeiture has been resolved.

18 The issue of restitution will be dealt with in the
19 judgment and discretion of the Court.

20 And I just want to remind myself here, but I believe
21 the financial circumstances of the defendant based on negative
22 cash flow and net worth -- oh, I take that back. Mr. Watson
23 does have the ability to -- to pay a fine. And with that in
24 mind, the fine range is -- the fine range is -- at -- at 32,
25 Level I. The maximum fine available to the Court is \$250,000.

1 The guideline fine range at 32, Level I is 20,000 to 200,000.

2 Is that right, Mr. Hampstead?

3 PRE-TRIAL OFFICER: Your Honor --

4 THE COURT: Or is it lower?

5 PRE-TRIAL OFFICER: -- I don't have a 2016 manual
6 with me.

7 THE COURT: What section is the fine table listed at,
8 just as a shortcut?

9 PRE-TRIAL OFFICER: It's the very last page in the
10 book, Your Honor, on the right, and it should be right there.

11 THE COURT: Thank you.

12 (Brief pause)

13 Okay. All right. That's actually going to be 35 to
14 \$350,000. So fine -- fine table at the guideline range of 32,
15 Level I is 35,000 to 350,000, but we cut it off at 250,000
16 because that's the statutory maximum. Therefore, the fine
17 range on Count 1 is 35,000 to \$250,000. And Mr. Buckley can --
18 may or may not argue for a fine during his allocution comments.

19 I believe that takes care of all the preliminaries
20 unless either of the lawyers would like to speak to anything
21 before we get to the sentencing mitigation factors. No?

22 MR. FISHMAN: I -- I think that's everything.

23 THE COURT: All right. Okay. Very good. Mr.
24 Fishman has the right -- I should say Mr. Watson has the right
25 to make a statement or present any information to mitigate the

1 sentence. I would indeed recognize Mr. Fishman for any remarks
2 he'd like to make on behalf of his client at this time, bearing
3 in mind I have read the entire Sentence Memorandum, the
4 response to the government's Sentence Memorandum, and there
5 were a number of -- quite a number of compelling letters
6 written on behalf of the defendant as well. Go right ahead.

7 MR. FISHMAN: I can start by assuring the Court that
8 in no way, shape or form will our allocution take anywhere near
9 as long as what we heard earlier this morning.

10 THE COURT: Okay.

11 MR. FISHMAN: And I should tell you at the outset,
12 Mr. Watson understands that he has the right to speak. He and
13 I have discussed it in detail. He understands he went to
14 trial, he knows he didn't testify at trial, and he knows that
15 there's going to be an appeal of the case. And having
16 discussed it with him, he's going to tell you when I'm done
17 that he doesn't wish to address the Court or allocute in any
18 way.

19 THE COURT: Okay.

20 MR. FISHMAN: Okay?

21 THE COURT: Yep.

22 MR. FISHMAN: If I may just go to what I think is the
23 easier thing first, I'm not sure what the Court was looking at
24 that gave you the impression that Mr. Watson could afford to
25 pay a fine. If there's something that I don't know about, it

1 must be because --

2 THE COURT: I believe Mr. --

3 MR. FISHMAN: -- from what I know, Mr. Watson doesn't
4 really have anything.

5 THE COURT: Hold on a minute. Mr. Hampstead says at
6 page 12 that it appears the defendant has the ability to pay a
7 fine in full with a lump sum payment, and that is based on his
8 overview of the -- I would imagine the assets set forth at page
9 13, paragraph 66, and the net worth, which is positive. So I
10 think, correct me if I'm wrong, that's where the --

11 PRE-TRIAL OFFICER: That is where it came from.

12 THE COURT: All right. Go ahead.

13 MR. FISHMAN: I would -- I would just suggest,
14 knowing him, he's got three boys, 15, 18 and 21 in college,
15 there's a lot of expenses in the house and a wife, I -- I'd be
16 shocked if he could afford to pay a fine, but, you know,
17 that -- that's up to the Court.

18 THE COURT: Okay.

19 MR. FISHMAN: Although I should say I think if he had
20 the money to pay a fine, he'd tell me that and I'd be telling
21 you go ahead and fine him and use that to mitigate -- no,
22 you -- you know what I'm saying.

23 THE COURT: I know what you're saying.

24 MR. FISHMAN: But he doesn't, and I can tell you that
25 and I know him well enough to tell you that.

1 THE COURT: Okay.

2 MR. FISHMAN: Let -- let me -- let me start with the
3 things that I think merit a variance and -- and run those by
4 the Court first, and then I want to talk about Mr. Watson, not
5 nearly as at length as you heard earlier. But you have a
6 number of letters that tell you a lot about him, and I'll get
7 to that in a minute.

8 With respect to the variance, I'd like the Court to
9 consider three separate issues for variance. The first one is
10 the one we spent the most time talking about, that being the
11 14-level enhancement for the money. I don't believe that
12 there -- the Court already said it and I think found it as a
13 fact -- that there was nothing indicating that Mr. Watson
14 participated in the theft if there was one. There's nothing
15 really in the conversations, taped or otherwise, that say that
16 he got any money as a result of this. And I think the Court
17 has the right to consider his role in the offense, which I
18 think you accurately described earlier, in determining that
19 that's overstating his involvement in the case. And I'm not
20 telling you how much you should reduce it, but I believe you
21 should reduce the 14-level enhancement, you should grant some
22 type of a variance as to that for the reasons that we've
23 discussed exhaustively between Mr. Buckley and myself and --
24 and the Court.

25 The second thing is I think the same analysis should

1 apply to the four-point public official enhancement. I
2 understand the Court's rationale and I understood the probation
3 department's inclusion because Application Note (B) mentions a
4 police officer as someone that's included. But I think this
5 Court has the right to consider what his level was and what
6 kind of influence he had, which was none, on anything that went
7 on, and I think that the Court could grant a variance as to
8 that as well.

9 And the other thing with respect to variance, it
10 would be to sentencing disparity. I -- I understand the
11 Court's decision and I think there's -- you know, I read the
12 couple of cases that were talking about that. But I do think
13 that it's something for you to consider in imposing sentence.
14 If you conclude, which it sounds like you have, but if -- if
15 you conclude ultimately that his role was similar to Mr.
16 Leavells, I do believe based on their backgrounds, et cetera
17 that they're similarly situated enough that the Court should
18 consider granting some kind of a variance to keep his sentence
19 more in line with whatever it is that Mr. Leavells is going to
20 receive, which we know pretty much for sure is going to be less
21 than 46 months.

22 So those are the three sentencing disparity things I
23 hope the Court takes into account when you decide on your
24 sentence.

25 With respect to Mr. Watson, I'm sure the Court noted

1 the kind of letters that you received.

2 THE COURT: Yes.

3 MR. FISHMAN: And I want you to know that Mr. Watson
4 and I discussed letters in detail. I've had enough
5 conversations with judges in our district about letters, and I
6 have a decent idea about what are the kinds of things that
7 actually pique the interests of a sentencing judge. I don't
8 think, for instance -- and I guess I'm saying this backwards --
9 I agree with the Court that to receive a letter from someone
10 who participates in the justice system somewhere else that
11 questions the jury's verdict or questions the behavior of
12 either the -- the prosecutors or the -- the agents, I think
13 that's untoward at best, and you won't find anything like that
14 in any discussion from me.

15 THE COURT: Let me -- let me interrupt --

16 MR. FISHMAN: Sure.

17 THE COURT: -- to say that -- that you're right. And
18 I mean the -- the -- the -- the top of the stack of the
19 letters, and I said the word compelling earlier and I meant
20 that, are -- are from family members, including, most
21 particularly, the defendant's son.

22 But -- but go right ahead. I'm sorry I interrupted.

23 MR. FISHMAN: Well, that -- that's -- that -- that's
24 precisely what I was going to get to next. I think that -- and
25 I put it in the Sentencing Memo and it actually stemmed from a

1 conversation I had with Mr. Watson, and we're not here and he's
2 not going to talk and we're not here to rehash anything of the
3 trial itself or anything that went on other than the
4 discussions we had about guidelines.

5 I think that the letters are significant, as I
6 indicated in the Sentencing Memo, when you have a defendant in
7 front of you, particularly where there's been a trial, and the
8 government, of course, and nobody blames them for it, they do
9 their best to make the defendant look as bad as possible
10 because, of course, they're prosecuting him. I think it's
11 important for the Court to get letters from people who know him
12 for years and years and years so you get a full idea of who
13 you're dealing with, and I think that the letters that you've
14 received tell you that.

15 I think the letter, as I said -- and I didn't say it
16 tongue in cheek, quite frankly. You get a letter from his
17 wife, okay, fine. Maybe my wife would write a decent letter;
18 I'm not sure, but she might. But you get a letter from the
19 ex-wife, and his ex-wife writes what she wrote, and -- and what
20 does she write, what's the most significant things, at least to
21 me? The most significant things to me about Mr. Watson are his
22 relationships with this children. And looking at their ages,
23 and looking at where they are in life, and looking at what
24 their relationship is, and looking at the fact that he spent so
25 much time obviously with the boys coaching and football

1 obviously and being around them and being around their friends,
2 I mean those are the kinds of things that lets a judge know
3 that we're not just dealing with some guy who, you know, runs
4 around in the streets and doesn't have anything to do with his
5 kids if he has them, et cetera and so forth. I think that's
6 something that the Court should definitely consider in imposing
7 sentence in this case.

8 Other letters that you receive, and I encourage this
9 with every client of mine, you receive letters from people who
10 do what I consider to be good works with the defendant, and
11 that in this instance appears to be, and not surprised knowing
12 Mr. Watson and his football background, coaching the youth.
13 And I don't think I have to make a speech to anybody as to how
14 important that is in this day and age, right? You have to have
15 some adults, hopefully they've got a little ability too so they
16 can teach them to play, but basically to coach the youth
17 because this Court knows, you don't see it as much here as we
18 do in Recorder's Court, but the youth are parading into
19 courtrooms all around the country most of the time because they
20 don't have any direction, they don't have any supervision, and
21 they don't have anything else to do other than get in trouble.
22 So whatever things there are, and I said in my Sentencing Memo
23 Mr. Watson's an imperfect man, but he deserves credit in my
24 view for the amount of time that he has put in not just with
25 his own sons but with other people's sons.

1 So I do think that there are plenty of things that
2 justify a variance in this case. I -- I heard the Court in --
3 in -- in the prior sentencing come to the conclusion that there
4 weren't anything, there was no individual or no combination of
5 things that justified a variance. But I think between the
6 three issues that I raised, particularly the first two where
7 you have that 14-point -- 14-level enhancement and then the
8 extra four-level enhancement, I think that the Court can grant
9 a variance to Mr. Watson.

10 He knows he's going to jail, he's known it from the
11 minute of conviction. And I -- I -- I'm not making a -- a
12 voluntary surrender argument now; I'll save it in -- in the
13 likelihood. But he -- he's known all along, okay, and he's had
14 to do things that are as uncomfortable as anything anybody can
15 ever do, number one of which is talk to your children. And you
16 could see from the letters that the kids, it -- it's going to
17 be tough, it's going to really be tough, but I can tell you
18 this. The way in which he's handled it, it won't be quite as
19 tough.

20 THE COURT: Very good. Okay. All right. Thank you,
21 Mr. Fishman. Those remarks are most appreciated and very well
22 done, as always, and helpful in arriving at a proper sentence
23 in the case.

24 Mr. Watson, as your lawyer just said, you have the
25 right to make remarks on your own behalf and say personally

1 anything you'd like to make to the Court -- say anything you'd
2 like to say to the Court on your own behalf at this time.

3 DEFENDANT WATSON: No, Your Honor.

4 THE COURT: Okay. All right. The defendant has
5 foregone his right to make any further remarks, and I'll rely
6 on what Mr. Fishman said on his behalf.

7 Mr. Buckley, on behalf of the United States, of
8 course, you have the right to make any further remarks as to
9 the appropriate sentence, and I'd be very glad to hear what you
10 have to say now. Go right ahead.

11 MR. BUCKLEY: Thank you, Your Honor. May it please
12 the Court, thank you for letting me be heard.

13 I think first, Judge, I'd like to address Mr.
14 Fishman's comments insofar as they relate to the requested
15 variance. You know, he talks about the 14-level enhancement,
16 and, Judge, I think it's important to remember that Mr. Watson
17 was convicted of conspiracy.

18 I think it's also important to recall the testimony
19 that it was Mr. Watson and not Hansberry who first told Mr.
20 Jackson he'd get \$300,000 off the top of that \$3 million
21 seizure in July of 2010.

22 Mr. Watson was working very closely with Mr.
23 Hansberry. He was his guy in the crew. Now, Mr. Fishman
24 doesn't want to put any weight on the fact that Mr. Watson was
25 the crew chief, but Mr. Watson was by far more experienced than

1 Mr. Hansberry, and notwithstanding Mr. Hansberry's claims, I
2 think Mr. Watson was a lot more street smart than Mr.
3 Hansberry, and I think Mr. Hansberry relied on Mr. Watson as
4 his right-hand man. And I think that the 14-level enhancement
5 is just as appropriate for Mr. Watson as it was for Mr.
6 Hansberry.

7 The second stated basis was the -- for a variance was
8 Mr. Fishman addressed the four-level enhancement for a public
9 official using a sensitive position. There's no question,
10 Judge, that -- that Mr. Watson was in a sensitive position.
11 He, as was said by Mr. Fishman earlier, was responsible in
12 paying confidential informants. Mr. Fishman cited the
13 testimony of Officer Herbert, the financial officer. In this
14 instance, the four-level enhancement is appropriate.

15 Again, the disparity has already been discussed.
16 Judge, Mr. Watson's in a different situation than Mr. Leavells.
17 He was far closer, he being Mr. Watson, to Mr. Hansberry. He
18 was his right-hand man. There was testimony by Officer -- or
19 then-Officer Leavells that he was kept out of those
20 conversations between Mr. Watson and Mr. Hansberry. There's no
21 question that Mr. Watson was far more culpable in this
22 conspiracy than Mr. Leavells.

23 Judge, with regard to the letters, obviously,
24 obviously Mr. Watson's family and friends care very deeply
25 about him. And, you know, sentencings bring joy for nobody.

1 Sentencings I imagine are the most difficult task that a
2 district judge has to oversee. But the fact remains that the
3 family members I think obviously are biased. They love their
4 dad, they love their husband, their ex-husband or what have
5 you.

6 The government unfortunately is not in a position to
7 come forward with letters from the true victims in this case,
8 because Mr. Watson is not the victim here. Mr. Watson is
9 convicted of the most serious offense in the indictment. He's
10 convicted of extorting money from drug dealers and drugs from
11 drug dealers and conspiring to do that.

12 I wish, Judge, that I could come to the Court with
13 letters from the thousands and thousands and thousands of
14 people in this city that have been victimized by cocaine
15 trafficking and heroin trafficking. If the Court had the
16 opportunity, we could all get on a bus right now and just drive
17 out to the neighborhoods and find city blocks leveled except
18 for burned-out buildings or occasionally the one well-kept
19 house on a block with waist-high grass. That is the direct
20 results, Your Honor, of drug trafficking. And that drug
21 trafficking related in some people leaving the city, a lower
22 tax base. There have been numerous, numerous homicides,
23 there's been assaults, robberies, carjackings, all related to
24 drug trafficking.

25 And -- and Mr. Watson really was in the best position

1 to see all that. He was a narcotics officers. He made a
2 decision to go in a different direction and engage in criminal
3 activity, and -- and just as Mr. Hansberry, he shamed his
4 badge, he made it a badge of shame.

5 Now, I'm not going to restate the -- the way in which
6 the conspiracy was effectuated. The Court was here, the Court
7 heard the testimony. But -- but this case really is also about
8 greed and betrayal, betrayal of oath, betrayal of office,
9 betrayal of the citizens of the City of Detroit, betrayal of
10 the entire justice system which was made a mockery of with
11 false search warrants, forged judges' signatures and so on,
12 putting sham kilos, dummy keys on evidence.

13 Again, Judge, Mr. Watson is not a victim here and I
14 think he should be held accountable. And so for the reasons
15 stated in Section 3553 of Title 18, including promoting respect
16 for the law, the seriousness of the offense and the need to
17 deter others, we're asking for a sentence of 151 months because
18 it's our position, Judge, that really Mr. Watson was just as
19 culpable as Mr. Hansberry; they were partners in this
20 conspiracy.

21 THE COURT: Okay. All right. Very good. I
22 appreciate that and that's a well-informed recommendation and
23 well laid out and exceedingly helpful to the Court as well.

24 And as always, I have to thank the lawyers for
25 skillful, if not expert, representation of their clients,

1 which, frankly, I -- I appreciate what Mr. Buckley said. Good
2 lawyering in difficult cases like this make sentencing in these
3 types of cases extremely difficult, but it's an obligation that
4 I took on and it's one that I have to dispose of and I'm going
5 to do that now. In fact, I'm going to state the sentence and
6 then give the lawyers for both sides an opportunity to make
7 legal objections before any sentence is finally imposed.

8 Okay. When -- when I came to court -- and obviously
9 this case has been on my mind for quite some time, but when I
10 came to court today, I didn't know what the numbers were going
11 to ultimately be because I wanted to keep a mind open so that I
12 could make proper judgments and hear from the lawyers. But I
13 will tell you the guidelines are -- are advisory and they
14 suggest what should be a proper sentence. And in my view,
15 numbers like, you know, 20 years, 13 years, 10 years for -- for
16 crimes of this nature are -- are -- are enormous, and I can't
17 very well, you know, shirk or shrink with repulsion from those
18 numbers because I -- I don't like them. Another part of my
19 judicial obligation is to stand up for or at least adhere to
20 what the people of the United States on behalf of whom their
21 representatives have -- have suggested these guidelines did.

22 I -- I -- I wasn't inclined to sentence anybody to --
23 to 20 years when I worked into -- walked into the courtroom,
24 and it was difficult to give Mr. Hansberry 12 years and
25 11 months. But my decision with regard -- or at least my

1 judgment with regard to -- to Mr. Watson is that -- is that
2 his -- his crimes, while no less -- or his crime I should say,
3 while -- while no less serious, deserve a lesser punishment,
4 and I would say that for a couple of reasons.

5 Reason number one, I do believe that in -- in the
6 hierarchy of what was going on in the proofs that were
7 submitted and lodged by the United States, that Mr. -- that Mr.
8 Watson was at a lower level, less charismatic, perhaps, in
9 fact, probably less involved than Mr. Hansberry.

10 That's supported by factor number two which is that
11 the compelling testimony from Agent Nalu in the tax and
12 financial portion of the case indicated that the amounts that
13 Mr. -- that Mr. Watson actually took from the criminal activity
14 were less.

15 And then finally, and I touched on this earlier, I --
16 I simply believe that the -- that the proof that the government
17 lodged against Mr. Hansberry was stronger and showed more --
18 more involvement than -- than -- than -- than Officer Watson.

19 Now, my sense of where Mr. Leavells is going to lie
20 seems to be five years and probably a lot less. Mr. Fishman is
21 sanguine about the fact that the -- that the cooperation is
22 going to get him time off of that. I'm fine with that.
23 Whether -- whether we're less than five years, at five years,
24 at 13 years or somewhere in between, that's an enormous amount
25 of time.

1 It has taken a law enforcement officer, who the jury
2 found has violated his oath to protect the community and used
3 for his personal gain, out of the -- out of the service of the
4 department.

5 A sentence within the guideline range of 121 to
6 151 months would address the deterrent issues, deterrence
7 issues that I mentioned earlier, which are to say to other law
8 enforcement agencies and agents and -- and -- and officers
9 across the country not to engage in this type of conduct, and
10 it would certainly punish the specific wrong that was done to
11 the community and the -- and the -- and the folks who suffered
12 abusive conduct in this case as well.

13 So I think 121 to 151 months would be supportable. I
14 am going to downward de -- or vary by two levels, and I'm going
15 to go within a range of 97 to 121 months. And the reason for
16 the variance in no way, in no way is to undercut the validity
17 and the strength of the evidence lodged by the government
18 against Mr. Watson because I do believe that the evidence on
19 Count 1 proved beyond a reasonable doubt guilt on that count,
20 but -- but I do believe that the 14-level enhancement
21 overstates the involvement that Mr. Watson had, especially in
22 light of the fact that I can't remember any specific evidence
23 that rivals what Mr. Hansberry was involved in at that scene.

24 I do credit Mr. Buckley's argument that -- that Mr.
25 Watson worked closely with and -- and certainly had a

1 responsible position underneath Detective Hansberry, but I do
2 believe as a matter of law and in my judgment a variance based
3 on lesser involvement and the overstatement of the 14-level
4 enhancement given should be awarded. And so I will depart
5 downward or, excuse me, vary downward to a level of 30,
6 Criminal History Category I; that's 97 to 121 months.

7 Accordingly, pursuant to the Sentence Reform Act of
8 1984, the Court, having considered the sentence guidelines and
9 factors contained in 18 USC, Section 3553(a), will hereby
10 commit the defendant Bryan Watson to the custody of the U.S.
11 Bureau of Prisons for a term of 108 months.

12 Upon release from imprisonment, the defendant shall
13 be placed on a supervised release term of two years.

14 It's further ordered that the defendant shall pay a
15 special assessment of a hundred dollars. That will be due
16 immediately.

17 The Court will impose a fine of \$2,000. That will be
18 due immediately. Interest shall not occur -- accrue on that
19 fine.

20 While in custody, the defendant shall participate in
21 the Inmate Financial Responsibility Program, IFRP. The Court
22 is aware of the requirements of the IFRP and approves the
23 payment schedules of the program and hereby orders the
24 defendant's compliance.

25 I would like to say a word about the -- about the

1 fine. I looked closely at the financials. A minimum fine of
2 \$2 -- \$20,000 or I should say \$35,000 would lie. I think
3 probation believes that that could be paid. I -- I -- I --
4 I generally in a case like this, if a fine can be paid and is
5 authorized by statute and if there is a financial incentive for
6 a fine, will impose one, and that's my justification for
7 imposing a very, very minimal fine of \$2,000 in this case. But
8 I think he can pay that and I think it's appropriate given the
9 consideration that was given both in the variance and -- and in
10 the overall nature of what the penalty for the crime should be.

11 With that in mind, the mandatory drug testing
12 condition will be suspended based on my determination that the
13 defendant poses a low risk of future substance abuse.

14 While on supervision, the defendant, Mr. Watson,
15 shall abide by the standard conditions adopted by the U.S.
16 District Court for this district and he shall comply with the
17 following special conditions:

18 Mainly due to the imposition of a fine, number one,
19 he has to make monthly installment payments on any remaining
20 balance of the fine at a rate and schedule recommended by the
21 Probation Department and approved by the Court.

22 Number two, he shall not incur any new credit charges
23 or open additional lines of credit without the approval of the
24 probation officer.

25 And number three, he shall provide the probation

1 officer access to any requested financial information.

2 That will be the sentence of the Court, and I would
3 ask Mr. Buckley if he has any objections aside from those that
4 have already been argued before it's imposed.

5 MR. BUCKLEY: Judge, just again to preserve the
6 objections previously made, that's all.

7 THE COURT: Okay. Those are preserved.

8 And Mr. Fishman, to you?

9 MR. FISHMAN: I -- I believe they're already
10 preserved so I have nothing further.

11 THE COURT: All right. Very good. Then the sentence
12 that I stated earlier will be imposed based on the reasons that
13 I gave.

14 Mr. Watson, you have the right to appeal your
15 sentence. You also have the right to appeal your conviction.
16 Given that you were convicted after a lengthy jury trial, any
17 Notice of Appeal must be filed within 14 days of the entry of
18 judgment in this case or within 14 days of the filing of a
19 Notice of Appeal by the United States. If requested, our clerk
20 will prepare and file a Notice of Appeal on your behalf.

21 And if you can't afford to pay the costs of an appeal
22 or for appellate counsel, you have the right to apply for leave
23 to appeal in forma pauperis. That means you can apply to have
24 the Court waive the filing fee when you have your appeal
25 docketed. On appeal you may also apply to the Sixth Circuit

1 for court-appointed counsel.

2 Again, Mr. Buckley suggests that Mr. Watson should be
3 remanded to the custody of the marshal. My -- my sense is that
4 we can accomplish what we need to accomplish without immediate
5 remand. But Mr. Buckley, I know you spoke earlier about Mr.
6 Hansberry, and I'll give you the opportunity now if you'd like
7 to speak further on this issue.

8 MR. BUCKLEY: Your Honor, my position remains
9 unchanged, but I don't know that anything that I have to say
10 would change the Court's mind if the Court's inclined to
11 release Mr. Watson. My -- my reasons for seeking remand are
12 essentially the same.

13 THE COURT: All right. Thank you very much for those
14 remarks.

15 And would you like to make any response, Mr. Fishman?

16 MR. FISHMAN: No, sir.

17 THE COURT: Okay. I will order -- I -- I -- I should
18 say for the record that I -- I do find the community ties
19 compelling. He was here every day for -- for his trial. Yes,
20 there's a change in circumstances, but based on a brief
21 conversation I had with Pretrial, I think we can assure his --
22 his reporting date.

23 Therefore, Mr. Watson, you'll be ordered to report
24 for service of your sentence in the future. The release
25 conditions that the magistrate judge put you on will continue

1 to apply, and failure to report for your sentence would be a
2 criminal offense under 18 USC, Section 3146. So be careful and
3 pay attention to the information you receive in the mail from
4 the Bureau of Prisons.

5 Now, both lawyers have copies of the Pre-Sentence
6 Report, as do their clients. Amended copies reflecting
7 corrections and resolutions of the disputed issues that we
8 argued about today and which were decided will be prepared, and
9 then a complete corrected copy sent to the Bureau of Prisons
10 and the Sentencing Commission. Any other copies are to
11 be keep -- be kept confidential according to the practice of
12 the district. And -- and if -- if counsel on appeal who is
13 permitted access to the report wants to look at it, that's
14 fine, but the sentencing recommendations will not be disclosed
15 or accessed to the recommendation of sentence, as is the
16 longstanding policy of our court.

17 And, you know, I just -- I just wish you well in the
18 future, Mr. Watson. I do find it very regrettable that we're
19 here under these circumstances. The family letters were --
20 were compelling. Your presence at trial every day showed me
21 that you took this seriously. You had a -- a good past, and
22 I'm hopeful the future can be much better for you after you get
23 through this difficult period.

24 And I thank the lawyers again for their service and
25 work.

1 And with that, we'll be in recess now, okay?

2 MR. FISHMAN: Judge, I -- I should just say --

3 THE COURT: Yeah.

4 MR. FISHMAN: -- we -- we are not requesting a
5 specific designation because, Mr. Watson being a former police
6 officer, we leave that to the Bureau of Prisons to pick the
7 right spot.

8 THE COURT: Yeah. And -- and my hope obviously is
9 that they -- they in their expertise do something that will
10 assure his safety and long-term growth, but if there are any
11 issues and you need to file a motion, we'll always be open to
12 that.

13 MR. FISHMAN: Yeah. The only thing that -- and we've
14 discussed this in detail. He's not concerned about safety so
15 much.

16 THE COURT: All right.

17 MR. FISHMAN: But if they happen to send him to -- I
18 almost used a Yiddish word -- to Oregon --

19 THE COURT: Yeah.

20 MR. FISHMAN: -- where it will be too difficult for
21 his family, then I would probably try to do something about it.

22 THE COURT: Okay. All right. Sounds good.

23 MR. FISHMAN: Okay. Thank you.

24 THE COURT: Thank you all.

25 THE CASE MANAGER: All rise. Court is adjourned.

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(Proceedings concluded at 2:21 p.m.)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 70 comprise a full, true and correct transcript of the excerpt of proceedings held in the matter of United States of America vs. Bryan Watson, Case No. 15-20217, on Wednesday, February 22, 2017.

s/Linda M. Cavanagh
Linda M. Cavanagh, CSR-131, RPR, RMR, CRR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: February 27, 2017
Detroit, Michigan